WEBB & ANOR.

v.

STUBBINGS

HOUSE OF LORDS
LORD TEMPLEMAN, LORD BRIDGE OF HARWICH, LORD GRIFFITHS, LORD ACKNER AND LORD SLYNN OF HADLEY
16 DECEMBER 1992

TORT: Trespass to person - Claim for damages - Whether claim statute barred - Limitation Act 1980.

The respondent brought an action for damages against her adoptive father and stepbrother based upon allegations, which were denied, that she was sexually abused by her adoptive father between the ages of 2 and 14 and raped by her stepbrother when she was 12 and he was 17.

The appellants contended that the action was time barred and sought to dismiss the respondents' claims. The trial Court and the Court of Appeal upheld the respondents contention that her claim fell within the provisions of s.11(1) of the Limitation Act 1980 (the Act) and as such the limitation period was subject to extension based upon the date of knowledge of her having suffered sufficiently serious injury to justify starting proceedings for damages pursuant to s.14 of the Act. On further appeal the House of Lords considered the history of the relevant provisions of the Act.

Held:

[1] The terms in which the Act was introduced in Parliament make it clear beyond peradventure that the intention was to give effect to the Tucker Committee recomendation that the limitation period in respect of trespass to the person was not to be reduced to three years but should remain at six years.

[2] The respondents' causes of action against the appellants, being grounded in trespass to the person, were subject to a six year limitation period which was suspended during her infancy but commenced to run when she attained her majority and which period expired many years before she commenced proceedings.

[3] There are no provisions for extending this limitation period and the respondents' actions are statute barred and cannot proceed.

[Appeal allowed].

Cases referred to:
Letang v. Cooper [1965] 1 QB 232 ***(ovrl)***
Cartledge v. E. Jopling & Sons Ltd. [1963] AC 758 ***(refd)***

Legislation referred to:
Coal Industry Nationalisation Act 1946, s. 49
Crown Proceedings Act 1947, s. 48
Electricity Act 1947, s. 12
Fatal Accidents Act 1846
Limitation Act 1939 , ss. 2, 3, 21
Limitation Act 1954, s. 2(1)
Limitation Act 1980, ss. 2, 11, 14, 28
Public Authorities Act 1947, s. 48
Transport Act 1947, s. 11

Lord Templeman:

My Lords,

I have had the advantage of reading in draft the speech prepared by my noble and learned friend, Lord Griffiths. I agree with it, and for the reasons given, I would allow these appeals.

Lord Bridge of Harwich:

My Lords,

I have had the advantage of reading in draft the speech of my noble and learned friend, Lord Griffiths. I agree with it and, for the reasons he gives, I would allow the appeal.

Lord Griffiths:

My Lords,

The respondent will be 36 years of age on 29 January 1993. The question before your Lordships is whether the law permits her to pursue a claim for damages against her adoptive father and stepbrother based upon allegations that she was sexually abused by the adoptive father between the ages of 2 and 14 and raped by her stepbrother when she was 12 and he was 17. It should be made clear that these allegations are denied by both the father and stepbrother who are the appellants before your Lordships. It would obviously be a matter of grave difficulty for any Court to determine where truth lies if this action was to proceed, for it would be investigating events that are alleged to have occurred in a period starting over 30 years ago and ending over 20 years ago. It is also to be observed that neither the father nor the stepbrother would appear to have the means to satisfy any significant award of damages.

A summary of the respondent's allegations and the history of this litigation are contained in the judgment of Bingham LJ and the trial

Judge Potter J. I will not repeat them as a preface to my speech because I have come to the conclusion that this action became statute barred in January 1981 six years after the respondent reached her majority on 29 January 1975 and cannot therefore be allowed to proceed. My conclusion depends upon the construction of ss. 2, 11 and 28 of the Limitation Act 1980, but before turning to those sections it is I think helpful to consider the development of the law on limitation of liability since 1939.

The Limitation Act 1939 provided by s. 2 that actions founded on simple contract or tort should not be brought after the expiration of six years from the date on which the cause of action accrued; but by s. 21 of the Act it continued the special protection afforded to public authorities introduced by the Public Authorities Protection Act 1893 which provided a 12 month limitation period in respect of actions brought against public authorities.

The vast majority of actions against public authorities were actions for personal injuries arising out of accidents and it was seen as unfair that plaintiffs injured by a public authority should have a far shorter time in which to commence a claim than if they had been injured by someone in the private sector. In January 1948 the Lord Chancellor appointed a committee chaired by Lord Justice Tucker to inquire into this question with the following terms of reference:

> (1) whether the Public Authorities Protection Act 1893, as amended in its application to England and Wales by s. 21 of the Limitation Act 1939, and in its application to Scotland by s. 48 of the Crown Proceedings Act 1947, should be further amended or repealed;
>
> (2) whether the three-year limit prescribed by s. 49 of the Coal Industry Nationalisation Act 1946, s. 11 of the Transport Act 1947, and s. 12 of the Electricity Act 1947, for the bringing of certain actions against the authorities therein mentioned is satisfactory;
>
> (3) whether any alteration should be made in the time limits prescribed by the Fatal Accidents Act 1846, and by ss. 2 and 3 of the Limitation Act 1939, for the bringing of certain actions in England and Wales; ...

The Tucker Committee presented their report to Parliament on 30 June 1949. In their report they made it clear that the evidence they had heard related almost entirely to actions for personal injuries. Insofar as actions for personal injuries were concerned they made the following recommendations:

> (1) The Public Authorities Protection Act 1893, as amended, should be wholly repealed (paras. 6-24, 31, 32).
>
> (2) The period of limitation for actions in respect of personal injuries should be two years from the accrual of the cause of action, but the Court should have a discretion to grant leave to bring an action after the expiration of that period, but not later than six years from the accrual of the cause of action (paras. 22 and 23).
>
> (3) The period of limitation for actions founded upon contract or tort (other than actions for personal injuries) should remain at its present period of six years (paras. 19-21)
>
> (4) The periods of limitation in respect of actions brought against the Crown and the public corporations set up by the Nationalisation and similar Acts should be the same as the periods applicable to other public authorities and to private individuals (paras. 25 and 26).

It is I think obvious when reading the report that the committee was confining its recommendations in respect of actions for personal injury to accident cases. At paragraph 23 they said:

> 23. We consider that the period of limitation we have recommended should apply to all actions for personal injuries, whether the defendant is a public authority or not. We do not think it is necessary for us to define "personal injuries", although this may possibly be necessary if legislative effect is given to our recommendations. We wish, however, to make it clear that we do not include in that category actions for trespass to the person, false imprisonment, malicious prosecution, or defamation of character, but we do include such actions as claims for negligence against doctors.

I do not think it can be open to doubt that the respondent's complaints of sexual abuse and rape fall within the category of an action for trespass to the person referred to in the above paragraph. The committee were therefore recommending that such actions should continue to be governed by the six year period of limitation.

The Tucker Committee recommendations, with one amendment, were given effect to by the Law Reform (Limitation of Actions) Act 1954 which was introduced as a Private Member's

Bill with Government support. The one amendment to the Tucker proposals was that instead of providing a limitation period for personal injury actions of two years with the possibility of a judicial extension to six years it was decided to introduce a slightly longer period of three years with no option to extend it. Thus s. 2(1) of the 1954 Act provided:

> 2.-(1) At the end of subsection (1) of section two of the Limitation Act 1939 (which subsection provides, amongst other things, that there shall be a limitation period of six years for actions founded on simple contract or on tort) the following proviso shall be inserted -
>
> Provided that, in the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently or any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, this subsection shall have effect as if for the reference to six years there were substituted a reference to three years.

In *Letang v. Cooper* [1965] 1 QB 232 an attempt was made to escape from this new three year limitation period. The plaintiff had been sunbathing on the grass in the car park of an hotel when the defendant drove his car over her legs. The accident happened on 10 July 1957 but the plaintiff did not issue her writ claiming damages for personal injuries until 2 February 1961 which was outside the three year limitation period provided by the 1954 Act. This accident was obviously one to which the three year limitation period was intended to apply but in an attempt to escape the consequences of failing to issue a writ within the three year time limit the plaintiff's legal advisers claimed in both negligence and trespass to the person. This manoeuvre succeeded before the trial Judge who held that the defendant had been negligent but went on to hold that the phrase "negligence, nuisance or breach of duty" in s. 2(1) of 1954 Act did not include an action for trespass to the person so that the plaintiff had six years in which to bring her claim. If this decision was correct it would have nullified the effect of s. 2(1) of the Act for all claims for personal injuries could henceforth be framed in trespass and thus be subject to a six year limitation period. It is not therefore surprising that the Court of Appeal reversed the decision of the Judge and held that s. 2(1) applied to the plaintiff's claim which was thereby statute barred.

Lord Denning MR solved the problem by holding that the only cause of action lay in negligence and was thus statute barred. He said:

> When the injury is not inflicted intentionally, but negligently, I would say that the only cause of action is negligence and not trespass.

However he also went on to hold that if he was wrong and the plaintiff had a cause of action for trespass to the person he would hold that the phrase "breach of duty" covered a breach of any duty under the law of tort. Danckwerts LJ agreed with both Lord Denning's reasons for allowing the appeal. Diplock LJ held that on the facts pleaded the cause of action was one in negligence within the meaning of s. 2 and that the period of limitation was therefore three years. But he also held that the words "breach of duty" should be construed as applying to any cause of action which gives rise to a claim for damages for personal injury. Leave to appeal to the House of Lords was refused and there the matter has rested until the present case.

The next significant development in the law of limitation in personal injury cases arose out of the discovery that plaintiffs might suffer injury to their lungs in the course of their employment as a result of inhaling noxious dusts long before they realised that their health was affected; and the decision of the House of Lords in *Cartledge v. E. Jopling & Sons Ltd.* [1963] AC 758 that time ran for the purposes of limitation from the moment that the plaintiff had suffered injury irrespective of whether or not he was aware of it. This was a great hardship for it meant that many men who had suffered injuries as a result of their employer's negligence or breach of statutory duty were unable to recover damages because by the time they sought medical advice their claims were already statute barred. Parliament moved swiftly to remedy this injustice by enacting the Limitation Act 1963 which enabled the Court to extend the three year limitation period in cases such as *Cartledge v. Jopling.* As rightly stated by the editors of Clark and Lindsell on Torts:

Unfortunately, the provisions of the Limitation Act 1963 were overcomplicated and worked extremely badly.

The 1963 Act was therefore repealed and replaced by the Limitation Act 1975, the provisions of which now form part of the Limitation Act 1980 and provide a more satisfactory basis upon which to exercise a judicial discretion to extend the three year limitation period. This discretion is however limited to those personal injury actions which fall within the meaning of s. 11(1) of the Limitation Act 1980 which is in identical language to s. 2(1) of the Limitation Act 1954. The relevant parts of s. 11 provide:

11.-(1) This section applies to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person.

(2) None of the time limits given in the preceding provisions of this Act shall apply to an action to which this section applies.

(3) An action to which this section applies shall not be brought after the expiration of the period applicable in accordance with subsection (4) or (5) below.

(4) Except where subsection (5) below applies, the period applicable is three years from -

(a) the date on which the cause of action accrued; or
(b) the date of knowledge (if later) of the person injured.

Subsection (5) deals with actions on behalf of the estate of a deceased person and is not relevant to this appeal.

The date of knowledge of the person injured is defined in s. 14:

14.-(1) In ss. 11 and 12 of this Act references to a person's date of knowledge are references to the date on which he first had knowledge of the following facts -

(a) that the injury in question was significant; and
(b) that the injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty; and
(c) the identity of the defendant; and
(d) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant;

and knowledge that any acts or omissions did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant.

(2) For the purposes of this section an injury is significant if the person whose date of knowledge is in question would reasonably have considered it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

(3) For the purposes of this section a person's knowledge includes knowledge which he might reasonably have been expected to acquire -

(a) from facts observable or ascertainable by him; or
(b) from facts ascertainable by him with the help of medical or other appropriate expert advice which it is reasonable for him to seek; but a person shall not be fixed under this subsection with knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice.

In the present case the principal argument in the Court of Appeal focused upon whether or not the respondent knew she had suffered significant injury over three years before she commenced her action on 18 August 1987. The plaintiff 's case was that although she knew she had been raped by one appellant and had been persistently sexually abused by the other she did not realise she had suffered sufficiently serious injury to justify starting proceedings for damages until she realised that there might be a causal link between psychiatric problems she had suffered in adult life and her sexual abuse as a child. The Court of Appeal after considerable hesitation accepted this argument on behalf of the plaintiff. If it was necessary to decide the point I should not have found it easy to agree with the Court of Appeal. Personal injury is defined in s. 38 as including "any impairment of a person 's physical or mental condition" and I have the greatest difficulty in accepting that a woman who knows that she has been raped does not know that she

has suffered a significant injury. The Criminal Injuries Compensation Board ever since its inception almost thirty years ago has been making substantial awards to the victims of rape varying between about £6,000 and £20,000, and since the enlargement of the scheme in 1979 this has included victims within the family setting. Sexual abuse that goes no further than indecent fondling of a child raises a more difficult question, but some of the plaintiff 's allegations are so serious that I should have had difficulty in regarding them as other than significant. However I do not find it necessary to resolve this difficult issue as I accept the first submission made on behalf of the appellants which is that s. 11(1) does not apply to a cause of action based on indecent assault or rape for which the limitation period is six years and which is not subject to extension under s. 11.

The Court of Appeal dealt very shortly with this argument because understandably they considered themselves to be bound by *Letang v. Cooper*. Bingham LJ said:

> In *Letang v. Cooper* [1965] 1 QB 232 the Court of Appeal (Lord Denning MR, Danckwerts and Diplock LJJ) construed the language here in question as embracing a claim based on unintentional and intentional trespass to the person. Cooke J. so understood the judgments in *Long v. Hepworth* [1968] 1 WLR 1299, and I consider the Court of Appeal's ruling to be binding upon us as he held it binding upon him. The Limitation Acts 1975 and 1980 were enacted in the same terms against the background of this authority, which they must be taken to have endorsed. Even in the absence of authority I would, like Cooke J., reach that conclusion on construction of the statutory language alone, unless I could see some reason why Parliament should have intended to draw the suggested distinction, and I can see none. I am satisfied that this is an action falling within s. 11(1) of the Act.

Upon this passage I would make two comments. I do not think it is right to assume that the enactment of the 1975 and 1980 Limitation Acts were in any way related to or intended to endorse *Letang v. Cooper*. The 1963 Limitation Act was enacted to meet the problem of the insidious onset of industrial disease encountered in *Cartledge v. Jopling* and the 1975 Act was enacted to cure the imperfections of the 1963 Act. The 1980 Act merely re-enacts the 1975 Act. In my view no light is thrown on the true construction of s. 11(1) by this sequence of Acts which were passed to deal with a very different problem to that with which your Lordships are now faced. My second comment is that we now have an advantage denied to Bingham LJ because we are now permitted to look at Hansard and when we do so it becomes clear that Parliament had enacted s. 2(1) of the 1954 Act with the deliberate intention of giving effect to the Tucker Committee's advice that the three year period should apply to what I will broadly describe as accident cases and should not include causes of actions such as rape or indecent assault.

I accept that *Letang v. Cooper* was correctly decided in so far as it held that negligent driving is a cause of action falling within s. 2(1) of the 1964 Act. But I cannot agree that the words "breach of duty" have the effect of including within the scope of the section all actions in which damages for personal injuries are claimed which is the other ground upon which the Court of Appeal decided *Letang v. Cooper*. If that had been the intention of the draftsman it would have been easy enough to say so in the section. On the contrary the draftsman has used words of limitation; he has limited the section to actions for negligence, nuisance and breach of duty and the reason he did so was to give effect to the recommendation of the Tucker Committee that the three year period should not apply to a number of causes of action in which damages for personal injury might be claimed namely damages for trespass to the person, false imprisonment, malicious prosecution or defamation. There can be no doubt that rape and indecent assault fell within the category of trespass to the person.

Lord Denning in *Letang v. Cooper* was not prepared to assume that Parliament did intend to give effect to the Tucker Committee's recommendations, but we can now look at Hansard and can see that it was the express intention of Parliament to do so. The proposer of the Bill, Mr John Peyton, in moving the second reading said:

> In its main provisions the Bill follows precisely the recommendations of the committee which sat under the chairmanship of Lord Justice Tucker. There is only one comparatively minor point upon which the provisions vary from the recommendations of the Tucker Committee.

(See Hansard 4 December 1953 Col. 1545.) The minor point I have already identified, it was to substitute a fixed period of three years for a two year period which might be extended to six years. This point was accepted by Lord Tucker: when commenting upon it in the Second Reading in the House of Lords he said:

> With regard to the period, I do not think I am revealing any secrets when I tell your Lordships that on the committee, once they came to the conclusion that the proper course was to limit the period in regard to personal accident cases, there was a difference of opinion about whether that period should be two years or three years. I think the acceptance of two years with discretionary power to the Judge in chambers, represented a compromise between the two views but for which we should not have had a unanimous report from the Committee - and it is always valuable to have a unanimous report. I have no strong views on this subject, but I incline to favour some fixed period.

(See Hansard 25 May 1954 Col. 825.)

Even without reference to Hansard I should not myself have construed breach of duty as including a deliberate assault. The phrase lying in juxtaposition with negligence and nuisance carries with it the implication of a breach of duty of care not to cause personal injury, rather than an obligation not to infringe any legal right of another person. If I invite a lady to my house one would naturally think of a duty to take care that the house is safe but would one really be thinking of a duty not to rape her. But, however this may be, the terms in which this Bill was introduced to my mind make it clear beyond peradventure that the intention was to give effect to the Tucker recommendation that the limitation period in respect of trespass to the person was not to be reduced to three years but should remain at six years. The language of s. 2(1) of the 1954 Act is in my view apt to give effect to that intention, and cases of deliberate assault such as we are concerned with in this case are not actions for breach of duty within the meaning of s. 11(1) of the 1954 Act.

The language of s. 2(1) of the 1954 Act was carried without alteration into the 1975 Act and then into s. 11(1) of the 1980 Act where it must bear the same meaning as it had in the 1954 Act.

It thus follows that the respondent's causes of action against both appellants were subject to a six year limitation period. This period was suspended during her infancy but commenced to run when she attained her majority. See s. 28 of the 1980 Act. This period expired many years before she issued **her writ** in these proceedings. There are no provisions for extending this period and her actions are therefore statute barred and cannot proceed. For these reasons I would allow these appeals.

Lord Ackner:
My Lords,

I have had the advantage of reading in draft the speech prepared by my noble and learned friend, Lord Griffiths. I agree with it, and for the reasons given, I too would allow these appeals.

Lord Slynn of Hadley:
My Lords,
I have had the advantage of reading in draft the speech prepared by my noble and learned friend, Lord Griffiths. I agree that for the reasons he gives, these appeals should be allowed.